

REMARKS

Claims 57-83 and 97-102 are pending in the application. Claims 62-64, 66, 67, 70, 71, and 73-83 are withdrawn from consideration. Claims 57-61, 65, 68, 69, 72, and 97-102 have been examined and stand rejected.

Claims 68, 97, and 99-102 have been amended for clarification of the claimed invention in response to rejections based on 35 U.S.C. § 112, and not for overcoming the rejections based on prior art. Reconsideration of Claims 57-83 and 97-102 is respectfully requested. It is believed the amendments to Claims 68, 97, and 99-102 do not require any further searching or further consideration on the part of the Examiner. Claims 57 - 83 and 97 - 102 are allowable. In the alternative, applicants request the amendment be entered to place the claims in better condition for appeal.

The Rejection of Claims 58, 59, 68, and 97-102 Under 35 U.S.C. § 112, Second Paragraph

Claims 58, 59, 68, and 97-102 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicants regard as the invention.

With regard to Claims 99, 100, and 101, the Examiner states that the term "unrestrained" is unclear, inaccurate, and indefinite. Applicants respectfully disagree. In any event, the term "unrestrained" has been deleted from the claims. Accordingly, the withdrawal of the rejection of Claims 99-101 is respectfully requested. In the alternative, the amendment places Claims 99-101 in better condition for appeal.

With regard to Claim 97, the Examiner construes the claim to read that the forward lean system is attached to the medial and lateral cable portions. Thus, the Examiner concludes the cable portions are not part of the forward lean system. Applicants believe the claim is not indefinite. The term "attaches" is referring to the "area" and not the "forward lean system."

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Thus, as now amended, Claim 97 recites more clearly that the forward lean system has "a single general area on the boot, wherein the area is attached" Accordingly, the withdrawal of the rejection of Claim 97 is respectfully requested. In the alternative, the amendment places Claim 97 in better condition for appeal.

With regard to Claim 68, the Examiner states it is unclear to what "the first and second locations" are referring. Applicants respectfully disagree. As now amended, Claim 68 recites more clearly that the first and second locations are the locations to which the medial and lateral side cable members are attached. Accordingly, the withdrawal of the rejection of Claim 68 is respectfully requested. In the alternative, the amendment places Claim 68 in better condition for appeal.

With respect to Claims 58, 59, and 97, the Examiner finds these claims unclear because the Examiner cannot see how the lateral side cable is on the medial side of the boot. Applicants respectfully disagree. Claim 58 is clear to one of ordinary skill because the claim recites that the *forward portion* of the lateral side cable is attached at a single side of the boot, which can be the medial side in one embodiment. Thus, the rear portion of the lateral side cable can remain at the lateral side of the boot. This is how the lateral side cable can also be on the medial side of the boot without it being a medial side cable. Accordingly, the withdrawal of the rejection of Claim 58 is respectfully requested.

As now amended, Claim 97 recites that the single general area attaches to the forward portions of the medial and lateral cable portions coming from the respective rear upper opposite sides of the boot (i.e., the medial and lateral sides). Claim 97 does not recite on which side the area is located to which are attached the medial and lateral cables; therefore, applicants do not see the reason for the rejection. Accordingly, the withdrawal of the rejection of Claim 97 is

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respectfully requested. In the alternative, the amendment places Claim 97 in better condition for appeal.

As now amended, Claim 102 is clear because the forward portions of the cables are attached to only a single general position of the lower front foot portion. Accordingly, the withdrawal of the rejection of Claim 102 is respectfully requested. In the alternative, the amendment places Claim 102 in better condition for appeal.

The Rejections of Claims 57, 58, 60, 61, 65, 68, 69, 72, 97, 98, and 102 Under 35 U.S.C. § 102(b)

Claims 57, 58, 60, 61, 65, 68, 69, 72, 97, 98, and 102 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,060,403 to Battistella. Claims 57, 65, 97, and 102 are independent claims. Claims 58, 60, and 61 depend directly or indirectly on Claim 57. Claims 68, 69, and 72 depend directly on Claim 65. Claim 98 depends directly on Claim 97.

Claims 57, 65, 97, and 102 are all directed to a boot, comprising a "forward lean system." The Examiner states that Battistella teaches several embodiments of a ski boot having structure substantially as claimed, including a forward lean system. Applicants respectfully traverse the rejection. Applicants understand the Examiner is attributing purely functional significance to the element of a forward lean system. Thus, the Examiner concludes this element is present in Battistella if a boot simply moves forward under the weight of a user (see Col. 4, lines 27-43) or if the boot is initially forward leaning (see the Office Action, page 3). The meanings given to the forward lean system element would not be given by one of ordinary skill in the art. Applicants believe the element "forward lean system" is recitation of a structure having a defined meaning to those who are skilled in the art. The meaning of a forward lean system to one of ordinary skill is not in accordance with what the Examiner says it is. As evidence of applicants' position, applicants are submitting the Declaration of Anthony O. DeRocco, declaring that Battistella does

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not have a forward lean system, contrary to the Examiner's position. As the Declaration is being submitted as evidence of applicants' earlier position (stated on page 6 of Amendment C and Response, filed September 3, 2002) that the references relied upon did not have a forward lean system, the Declaration is believed not to require further consideration, since the Examiner has been aware of applicants' position in the amendment. The Declaration is therefore necessary to rebut the Examiner's erroneous interpretation and thus applicants could not have submitted the Declaration prior to or in anticipation of the error. The Rules state that the claims must be given their broadest reasonable interpretation, that is, their plain meaning as interpreted by those of ordinary skill in the art. See M.P.E.P. § 2111.01. The Declaration shows that one of ordinary skill in the art does not consider Battistella to have a forward lean system. Therefore, the Examiner's interpretation of a forward lean system is not the plain meaning as understood by those who are skilled in the art.

For a reference to be anticipatory, the reference must exactly describe the claimed invention. Because Battistella at least does not describe a forward lean system, the reference is not anticipatory. Accordingly, applicants respectfully request withdrawal of the rejection of Claims 57, 65, 97, and 102 and the claims dependent thereon.

The Rejection of Claims 57-59, 65, 68, and 69 Under 35 U.S.C. § 102(b)

Claims 57-59, 65, 68, and 69 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,360,979 to Spademan. Applicants respectfully traverse the rejection. Claims 57 and 65 are independent claims.

Claim 57 is directed to a boot having a forward lean system, comprising medial and lateral side cable members, and a tension adjustment member. Claim 65 is directed to a boot having a forward lean system, comprising medial and lateral side cable members. Claims 58 and

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59 are dependent directly or indirectly on Claim 57. Claims 68 and 69 are dependent directly on Claim 65.

The Examiner states that Spademan teaches a ski boot having structure substantially as claimed including causing forward flexing of the boot. Applicants respectfully traverse the rejection. Again, the Examiner is attributing a functional meaning to the claim element "forward lean system" that is not in accordance with the plain meaning that a person of ordinary skill in the art would give to this claim element. As evidence of applicants' position, applicants are submitting the Declaration of Anthony O. DeRocco. For a reference to be anticipatory, the reference must exactly describe the claimed invention. Because Spademan does not describe at least a boot with a forward lean system, the reference is not anticipatory. Accordingly, applicants respectfully request the withdrawal of the rejection of Claims 57-59, 65, 68, and 69.

Furthermore, the structure of Spademan does not cause a forward motion. Spademan describes a dynamic sport shoe with an adjustable cuff link whose principal object is to be responsive to movement of the lower leg. See Column 2, lines 60-65. Thus, applicants believe the structure of Spademan does not induce forward motion of the shoe.

Furthermore, Spademan does not have a medial and a lateral cable as recited in Claims 57 and 65. In direct contrast, Spademan has cables coming from only one side of the boot to the buckle. Thus, Spademan has either two lateral cables or two medial cables, depending on whether the boot the Examiner alludes to is a right or left boot. Accordingly, Spademan does not describe both a medial and a lateral side cable member attached to a front portion of the boot at only one general position thereon.

Rejection of Claims 99-101 Under 35 U.S.C. § 102(b)

Claims 99-101 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,969,278 to Ottieri. Applicants respectfully disagree. Claims 99-101 are independent

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claims. The Examiner states that Ottieri teaches a ski boot having structure substantially as claimed. Applicants believe the Examiner again concludes the element "forward lean system" is nothing more than a recitation of function or intended use and gives it no weight. Applicants respectfully traverse the rejection. The Examiner's interpretation of "forward lean system" in the claims is not the plain meaning that a person who is skilled in the art would attribute to it. As evidence of applicants' position, applicants are submitting the Declaration of Anthony O. DeRocco, declaring that Ottieri does not have a forward lean system. Each one of Claims 99-101 recites a forward lean system as an element of the claim. For a reference to be anticipatory, the reference must exactly describe the claimed invention. Because Ottieri does not describe a forward lean system, the reference is not anticipatory. Accordingly, the withdrawal of the rejection of Claims 99-101 is respectfully requested. Furthermore, Ottieri describes a variable-volume inner shell to selectively tighten the inner shell around a foot. Applicants believe that no forward lean can be achieved by the system of Ottieri.

Furthermore, Claims 99-101 all have the recitation of a first guide located on the boot on an upper, rear portion of the boot; a second guide located on the same side as the first guide on a lower, front portion of the boot; and a third guide located on the side opposite the first guide on an upper, rear portion of the boot. To find anticipation, the Examiner says the second guide is located on the front of the boot portion designated by reference numeral 62b. If this is true, then, in Ottieri, the second guide is not on the *same side* as the first guide. Also, the second guide of Ottieri is not at a *lower*, front portion of the boot.

CONCLUSION

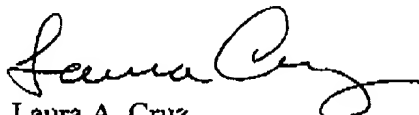
In view of the foregoing amendments, remarks, and the Declaration of Anthony O. DeRocco, applicants believe Claims 57-83 and 97-102 are in condition for allowance. In the alternative, the amendments do not require further searching or any more consideration on the

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part of the Examiner; thus, the amendment should be entered at least for the reason of putting the claims rejected under Section 112 in better condition for appeal. If the Examiner has any further questions or comments, the Examiner is invited to contact applicants' attorney at the number provided below.

Respectfully submitted,

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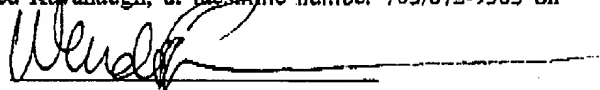
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I hereby certify that this correspondence is being transmitted via facsimile to the U.S. Patent and Trademark Office, Group Art Unit 3728, Examiner John Ted Kavanaugh, at facsimile number 703/872-9303 on January 7, 2003.

Date: January 7, 2003



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VERSION WITH MARKINGS TO SHOW CHANGES MADE JANUARY 7, 2003In the Claims:

Claims 68, 97, and 99-102 have been amended as follows:

68. (Four Times Amended) A boot according to Claim 65, wherein said portion comprises first and second locations [that] to which the medial and lateral side cable members attach, wherein said locations are substantially adjacent each other.

97. (Amended) A boot, comprising:
a forward lean system having a single general area on the boot, [that attaches] wherein the area is attached to forward portions of medial and lateral cable portions coming from respective rear upper opposite sides of the boot, said single general area located at a lower front location on the boot.

99. (Amended) A snowboard boot, comprising:
a forward lean system, comprising:
a first guide located on a side of the boot on an upper, rear portion of the boot;
a second guide located on the same side as the first guide on a lower, front portion of the boot;
a third guide located on the side opposite of the first guide on an upper, rear portion of the boot;
a first cable portion extending from the first guide to the second guide; and
a second cable portion extending from the second guide [unrestrained] to the third guide.

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100. (Amended) A step-in snowboard boot, comprising:
a forward lean system, comprising:
a first guide located on a side of the boot on an upper, rear portion of the boot;
a second guide located on the same side as the first guide on a lower, front portion of the boot;
a third guide located on the side opposite of the first guide on an upper, rear portion of the boot; and
a cable portion that extends [unrestrained] from the first guide to the second guide and extends [unrestrained] from the second guide to the third guide.

101. (Amended) A step-in snowboard boot, comprising:
a forward lean system, comprising:
a tension adjustment member at the rear of the boot;
a first guide located on a side of the boot on an upper, rear portion of the boot;
a second guide located on the same side as the first guide on a lower, front portion of the boot;
a third guide located on the side opposite of the first guide on an upper, rear portion of the boot; and
a cable portion that extends from the tension adjustment member to the first guide, the cable extends [unrestrained] from the first guide to the second guide, and extends [unrestrained] across the front of the boot [unrestrained] from the second guide to the third guide, the cable portion extends from the third guide to the tension adjustment member.

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102. (Amended) A boot, comprising:

an upper rear ankle portion;

a lower front foot portion; and

a forward lean system, comprising:

N.I. (cables from either side of the upper, rear ankle portion attached to the lower front foot portion, wherein forward portions of said cables [for applying a forward leaning force to the boot upper ankle portion from] are attached at only a single general position to the lower front foot portion.